

ORDERS ON IA IX

The 6th respondent has filed IA IX under section 151 and 152 of C.P.C praying to correct the 2nd Supplemental Pre-Decree dated 21-03-2006 if required to carry the true, correct meaning and for the purpose of order dated 07-03-2006 for the reasons stated by her in the accompanied affidavit, that the petitioners are confusing the court commissioner by insisting to divide the III item of suit 'A' schedule property into 9 shares saying that in the supplemental decree dated 21-03-2006 it has been ordered that said property has to be divided into 9 shares. But, the order dated 07-03-2006 is not so, the detailed order dated 07-03-2006 passed on memo dated 09-12-2005 clearly shows that the 5th and 6th respondent are entitled for allotment of III item of suit property to their share exclusively under equity. When such being the specific order as to allotment of said property to the share of 5th and 6th respondent, if there any confusion in supplemental decree dated 21-03-2006, it can be corrected to carry the true meaning of said decree.

2. The petitioner have objected the said application on the sole ground that as per the 2nd Supplemental Decree dated 21-03-2006, this court

clearly ordered for division of III item of suit 'A' schedule property into 9 equal shares and the 6th respondent is entitled to 1/9th share in the said property and as such it is very clear that said property is to be divided into 9 each share as the said order became final and none of the parties have challenged the said order.

3. Heard both counsel for the parties and perused the materials on record.

4. On perusal of the reasons assigned for the relief sought for in the light of order dated 07-03-2006 passed on memo dated 09-12-2005 filed by the 6th respondent seeking allotment of III item of suit property to the share of 5th and 6th respondent under equity and as directed by the Hon'ble High Court in R.S.A No.446/1995, it is noticed that after hearing both sides on said memo, this court, taking into consideration the directions of the Hon'ble High Court passed in R.S.A. No.446/1995, house constructed in the said property by the 5th respondent by spending her hard earned money and other respondents are residing at other respective places and come to the conclusion that it would be just and proper to allot item No. III of suit property to the 5th and 6th respondents on equity. It is also decided that the 6th respondent is entitled to 1/9th

share of the 5th respondent by virtue of undisputed Will executed by the 5th respondent as per Ex.R.1 dated 29-07-1996. It makes clear from the order dated 07-03-2006 that the III item of suit 'A' schedule property is allotted to the 5th and 6th respondents under equity, since 5th respondent bequeathed her share in favour of 6th respondent by executing undisputed Will dated 29-07-1996, the 6th respondent is entitled to III item of suit property.

5. The Supplemental Pre-Decree dated 08-11-2005 has been passed on IA VII filed by the defendants 3 to 5 petitioner herein praying for pass a supplemental decree as there was no declaration as to their 1/9th share each in the suit properties in the decree passed in original suit due non payment of court fee, according, application came to be allowed and supplemental pre-decree was passed 08-11-2005 declaring the 3/9th share of petitioners in the suit properties.

6. Thereafter, a 2nd supplemental decree dated 21-03-2006 has been passed on IA VIII filed by the 6th respondent praying for declaration of her 1/9th share and her mother 5th respondent's 1/9th share in the suit properties in the preliminary decree passed in O.S.No.1263/1978 as it was not declared

due to non payment of court fee. Therefore, it becomes evident that the 2nd supplemental decree dated 21-03-2006 on which the petitioner have claiming their 1/9th share in the III item of suit 'A' schedule property is a 2nd supplemental decree which passed on IA VIII filed by the 6th respondent claiming her 1/9th share and also 1/9th share of her mother 5th respondent who executed Will bequeathing her share in favour of 5th respondent. The supplemental decree 21-03-2006 passed on IA VIII is no way concerned to an order passed on 07-03-2006.

7. Therefore, in view of order dated 07-03-2006 it has been declared that the respondent No.6 is entitled to 1/9th share in the III item of suit property and also entitled to 1/9th share of 5th respondent to which she entitled to by virtue of Will. In this view of matter, if perused the 2nd supplemental decree 21-03-2006 in the light of order 07-03-2006 discussed above, it can be easily come to a conclusion that allotment of 3rd item of suit property to petitioners and other respondents equally is clerical error which comes within the preview of section 152 of C.P.C and hence it can be rectified. Therefore, for the reasons aforesaid, in order to carry the true and correct meaning of said order and

for the ends of justice, it is just and proper to correct the 2nd supplemental decree dated 21-03-2006. Hence I proceeds to pass the following:

ORDER

The I.A No.IX filed by the 6th respondent is hereby allowed.

After the word AS FOLLOWS:-
in page 2 of the 2nd supplemental decree dated 21-03-2006, point No.(i), (ii), (iii) and (iv) have to be deleted and in its place, the following paras have to be inserted.

The III item of suit 'A' schedule property is allotted to the share of 5th and 6th respondent exclusively under equity.

The 5th and 6th respondents are entitled to ½ share each in the III item of suit 'A' schedule property.

That, it is further decreed and ordered that 6th respondent is entitled to ½ share of 5th respondent by virtue of undisputed Will dated 29-07-1996.

That, it is further ordered and decreed that the 6th respondent is at

liberty to get allotment of entire III item of suit 'A' schedule property after submission of division report.

Office directed to rectify the 2nd supplemental decree date 21-03-2006 accordingly.

For commissioner report by:23-09-2020

Prl. Civil Judge and JMFC,
Karkala.